No. 79-1740

In The

Supreme Court of the United States

October Term, 1980

GERMAIN H. BALL, et al.,

Appellants,

v.

ROLAND W. JAMES, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF APPELLEES

BRUCE MEYERSON
(Counsel of Record)
AMY J. GITTLER
ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST
112 North Fifth Avenue
Phoenix, Arizona 85003
Tel. (602) 252-4904

Counsel for Appellees

QUESTION PRESENTED

Whether a multi-purpose political subdivision which provides electric service to over one-quarter million customers and 60% of the municipal water supply for approximately 1.5 million people can condition and weight voting on property ownership.

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BRIEF OF APPELLEES

STATEMENT OF THE CASE

This case concerns the constitutionality of the one acre, one vote election system of the pre-eminent political subdivision of the State of Arizona—the Salt River Project Agricultural Improvement and Power District (District or Salt River Project District). Although its pervasive electric utility operations and water management activities affect the lives of hundreds of thousands of residents in the Phoe-

nix metropolitan area,[1] the District is virtually unaccountable for its actions. As set forth more fully below, Appellants' brief significantly understates the District's wide-ranging activities and expansive growth.

A. *Although it was once Rural Farm Land, the District Today is Located in the Heart of Arizona's Most Populated Region.*

Established initially as the Salt River Valley Water Users' Association (Association) in 1903,[2] when Phoenix was little more than a dusty, desert crossroads, the original reclamation project evolved into much, much more. But despite the dramatic growth and urbanization in our community, and the corresponding change in the District's activities, the historic land-based voting scheme by which the District's governing board is chosen has remained relatively untouched.

The growth of the District's electric operations and the change in emphasis of its water activities, is, of course, directly related to the rapid urbanization of the District's geographic area. In 1937, when the District was formed, 94% of the the District's lands were agricultural. J.A. 46. By 1975, this proportion was reduced to 52%, with 48% of the District land committed to urban uses. *Id.* By 1979 ur-

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[1] Appellees are (1) residents of the District who are homeowners owning less than one acre of land and are entitled to a fractional vote for the District Board of Directors equal to the fraction of an acre which they own, ARIZ. REV. STAT. ANN. § 45-983.C (Supp. 1980) and (2) residents who own no land and are totally precluded from voting. ARIZ. REV. STAT. ANN. § 45-909 (Supp. 1980). Elections are held on the first Tuesday in April in even-numbered years. ARIZ. REV. STAT. ANN. § 45-965 (Supp. 1980).

This action was filed as a class action; Appellees have not appealed the denial of class action status by the Court of Appeals.

[2] For an excellent and thorough review of the District's history and growth, see Comment, *Voter Restrictions in Special Districts: A Case Study of the Salt River Project*, 1969 LAW AND THE SOCIAL ORDER 636 (now ARIZ. STATE L.J.). Although written before this Court's decision in *Sawyer*, the author argues forcefully that the District's voting system is constitutionally defective.

ban lands exceeded agricultural lands, making up 56% of the District. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, SALT RIVER PROJECT 1979-80 ANNUAL REPORT 11-12 (1980) (1980 ANNUAL REPORT).[3]

Today the 236,000-acre area making up the District, J.A. 33, embraces much of the Phoenix metropolitan area, including major portions of Phoenix, Scottsdale, Tempe, Mesa, Glendale, Chandler, Peoria, Tolleson and Gilbert. J.A. 32. These cities make up almost 50% of Arizona's population. *See* Exhibit K at 6.[4] About 75% of the combined area of these cities is served by the District's electric operations. *Id.* at 8.

Although at one time there was virtually a direct relationship between the District's water and power activities and ownership of land, that nexus has been significantly eroded over time. This erosion has come about principally for two reasons. First, the thrust of the District's activities has shifted away from simply providing water for agricultural land toward providing water and power to the urban areas of metropolitan Phoenix. Second, and equally important, the costs and risks associated with District activities have likewise become largely unrelated to land ownership, because (1) 98% of the District's water and power revenues are supplied by its electric customers, J.A. 36, and (2) nearly 90% of the District's debt is currently secured by District electric revenues, not by liens on land. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, OFFICIAL STATEMENT FOR ELECTRIC SYSTEM REVENUE BONDS, 1980 SERIES B at 25 (Oct. 1, 1980) (OFFICIAL STATE-

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[3] Although the District's 1980 ANNUAL REPORT is not in the record, it is a public document of which this Court may take judicial notice. It is referred to only to indicate trends already established when this action was filed. A copy has been lodged with the Clerk.

[4] "Exhibit" refers to Exhibits to Stipulated Statement of Facts. The exhibits are not included in the Joint Appendix, but are contained in a separately bound volume included in the record on appeal.

MENT).[5] These changes, which resulted from the enormous demographic shifts within the District, have been facilitated practically every step of the way by the Arizona Legislature through amendments to the District's enabling act.[6]

B. *The Enormous Demographic Changes in the District Have Been Mirrored by Expansion and Change in the Nature of the District's Operations.*

Sixty years ago, the electric operations of the Association were truly incidental to its water delivery activities; it served only 21 customers. Exhibit K at A-5. By 1975, its successor, the Salt River Project Agricultural Improvement and Power District, whose election system is at issue here, served almost 250,000 electric customers. *Id.* at 6. By April, 1980, the District was serving 313,000 customers, OFFICIAL STATEMENT 21, and has become not only Arizona's second largest electric utility, but the seventh largest publicly-owned electric utility in the United States. AMERICAN PUBLIC POWER ASSOCIATION, THE PEOPLE'S RIGHT TO CHOOSE 15 (1978).

In 1955 the District was granted the exclusive right to provide electric service to significant portions of Phoenix and surrounding communities. J.A. 37. The rapid growth in these areas required the District to quickly expand its electric generating capacity. The District has broad authority to

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[5] See footnote 3, *supra*.

[6] See footnote 7, *infra* and pages 6-7.

go even outside the State of Arizona to secure virtually any source of energy.[7]

By the time of the filing of this action in 1975, the District owned four steam-generating plants and was a participant in the Four Corners Plant in New Mexico, the Navajo Plant in Page, Arizona, and the Mohave Plant in Nevada. Exhibit K at 8-11. In the intervening five years the District has acquired an ownership interest in the Hayden and Craig Plants in Colorado and the Coronado Generating Station in St. Johns, Arizona, and the Palo Verde Nuclear Plant now under construction west of Phoenix. OFFICIAL STATEMENT 8-10, 14. The District estimates that it must spend $1.9 billion during the next five years to expand its electric system in order to meet the demands of new growth within its service territory. *Id.* at ii.

C. *The District's Authority Over Water Allocation and Management have Little Relationship to Land Ownership.*

The District's water delivery operations are significantly unrelated to agricultural activities. The District delivers almost sixty percent of the municipal water used in Phoenix, Scottsdale, Tempe, Chandler, Peoria, Glendale, Mesa and Gilbert. J.A. 35. Water deliveries to these cities increased by 39% between 1974 and 1979. *Compare* J.A. 35 *with* 1980 ANNUAL REPORT 15. These water deliveries are paid for by the cities from municipal water revenues. J.A. 50.

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[7] For the purpose of acquiring or assuring a supply of electric power and energy to serve the district's customers, the board, for and in the name of the district may, without the boundaries of the state, acquire, develop, own, lease, purchase, construct, operate, equip, maintain, repair and replace, and contract for . . . any form of energy or energy resources including but not limited to coal, gas, oil shale, uranium and other nuclear materials, hot water, steam and other geothermal materials or minerals, solar energy, wind, water and water power and compressed air, . . .

ARIZ. REV. STAT. ANN. § 45-935.B. (Supp. 1980).

Appellants are far too modest in their description of the District's authority over water matters within the District's service area. A.B.[8] 11-12. The Arizona Legislature has vested the District with many special and significant powers over water allocation and management not only within, but also beyond, the District's geographic area. More important, such powers may be exercised whether the water is owned by District landowners or not. For example, the District has absolute veto power over all transfers of surface water from one place or type of use to another. ARIZ. REV. STAT. ANN. § 45-172 (Supp. 1980) This veto power extends not only to lands within the District, but also to any "watershed or drainage area which supplies or contributes water for the irrigation of lands within [the] . . . district . . . ." ARIZ. REV. STAT. ANN. § 45-172.5 (Supp. 1980).

Most important, Appellants' claim that the District "only stores water behind its dams" and "then delivers water . . . to the landowners who own it," A.B. 12, is flatly untrue. Arizona's recently enacted Groundwater Management Act,[9] ARIZ. REV. STAT. ANN. § 45-401 *et seq.* (Supp. 1980), sanctions a long-standing District policy of pumping and transporting as much groundwater as is needed within its geographic territory.[10] ARIZ. REV. STAT. ANN. §§ 45-494, 541.D (Supp. 1980). Because "[g]roundwater does not respect property ownership boundaries. . . . [the District is] withdrawing groundwater from a common source of supply." ARIZONA GROUNDWATER MANAGEMENT STUDY COMMISSION, FINAL REPORT I-5 (June, 1980). Thus, the District's groundwater pumping activities have a very real impact on the water supply of central Arizona bringing about conse-

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[8] "A.B." refers to Appellants' brief.

[9] For a comprehensive analysis of the new Act, see Pontius, *Groundwater Management in Arizona: A New Set of Rules*, 16 ARIZ. B.J. 28 (Oct. 1980).

[10] In 1974, for example, the District pumped 361,000 acre-feet of groundwater, Exhibit L at 20, roughly 30% of the water which it delivered.

quences which are important not only to landowners but to all residents of the District's geographic area.

D. *The Costs and Risks of the District's Activities are Unrelated to the Ownership of Land.*

Although many years ago there was a relationship between the District's activities and land ownership, that is no longer the case. As already discussed, the District's functions exceed the mere provision of services to landowners. Likewise, the costs and risks associated with District activities are unrelated to land ownership, because (1) 98% of the District's revenues are supplied by its electric customers, J.A. 36, and (2) only 12% of District debt is secured by a lien on the land within the District.

Although Appellants argue extensively about the risk undertaken by the landowners in financing District activities, A.B. 20-26, the only risk undertaken by the landowners is limited to the "pledging" of their land as security for the repayment of certain loans to the Federal Government and for the sale of District general obligation bonds. This, of course, does not constitute capital investment, qualifying the landowners as entrepreneurs. As of January 2, 1976, out of $796,687,583 in long-term debt, $12,353,345 was owed to the United States and $283,160,000 pertained to general obligation bonds. Exhibit K at 36. The balance of approximately $500,000,000 was made up of revenue bonds which are "secured by a pledge of and lien on all revenues and income" of the electric system. *Id.* at iii. The last general obligation bond sale was in 1972, one year after the Legislature gave the District power to sell revenue bonds. ARIZ. REV. STAT. ANN. § 45-1061 *et seq.* (Supp. 1980).

Because the District has financed its long-term debt *solely* through the sale of revenue bonds since 1972, it estimates that the general obligation bonds will be fully paid off by the year 2006. OFFICIAL STATEMENT 26. Significantly, the growth of revenue bond issuance has further diminished the importance of the landowners' "risk." By July, 1980,

out of $2 billion of long-term debt, only $240 million or 12%, was made up of general obligation bonds and United States Government obligations. OFFICIAL STATEMENT 25. Appendix A.

E. *The District's Acreage-Voting System Removes it from any Meaningful Public Accountability.*

Despite its significant and far-reaching activities, the District is essentially unaccountable for its actions. The acreage-based voting system has vested control of the District in the hands of a coterie of large farmers[11] in our predominately urban community. For example, in the 1974 election, 561 people voted 15,219.73 votes (acres). J.A. 32. One Board member, Thomas P. Hurley, who has served at least since 1970, owns 892.75 acres of land, Exhibit S; it would take over 3,500 owners of one-quarter acre lots to match his voting strength.

Because it is an agricultural improvement district, under the Arizona Constitution, the District is exempt from regulation by the Arizona Corporation Commission (Commission). ARIZ. CONST. art. 13, § 7; art. 15, § 2. Under Arizona law, privately-owned utilities, such as Arizona Public Service Co. and Tucson Electric Power Co. are extensively regulated by the Arizona Corporation Commission. ARIZ. CONST. art. 15; ARIZ. REV. STAT. ANN § 40-201 *et seq.*

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[11] When this action was filed, all District Board members were affiliated with farming enterprises and activities. Exhibit T.

Only token changes in the one acre, one vote system have ever been made by the Legislature. Fractional voting for those owning less than one acre of land, ARIZ. REV. STAT. ANN. § 45-983.C (Supp. 1980), has not given the "electorate" any where near the voting strength of the large landowners. *See* J.A. 32. The 1976 amendment, which added four new directors, elected at large, with property owners entitled to cast one vote, ARIZ. REV. STAT. ANN. § 45-965. D (Supp. 1980), has still left control of the District in the hands of large landowners.

(1956). The Commission must prescribe "just and reasonable" rates, ARIZ. CONST. art. 15, § 3, and is authorized to fully regulate all aspects of utility service. ARIZ. REV. STAT. ANN. § 40-321 (1956).

The Commission is composed of three Commissioners who are popularly elected. ARIZ. CONST. art. 15, § 1. Any person "directly and substantially affected by the proceedings" may intervene before the Commission. Ariz. Admin. Rul. and Reg. R14-3-105. Intervenors have full right to present testimony, obtain discovery and cross-examine witnesses. R14-3-103-109.

Parties dissatisfied with decisions of the Commission may obtain judicial review. ARIZ. REV. STAT. ANN. § 40-254 (1956). Thus, the activities of the private utilities are subject to scrutiny by an elected body and ultimately by the Arizona courts.

Unlike privately-owned utilities which are heavily regulated, the District has untrammeled authority to exercise its broad power and water functions absent any meaningful degree of public control. The rate-setting authority of the District is vested in its Board of Directors, ARIZ. REV. STAT. ANN. § 45-934 (1956), and it may make all decisions with respect to the terms of service. *See id.* There is no provision for intervention in District rate proceedings; the public may only make oral or written "presentations." ARIZ. REV. STAT. ANN. § 45-933.01.D.3 (Supp. 1980). Finally, there is no express statutory procedure for judicial review of District rate decisions.

Appellants' extended efforts to compare the District with a privately-owned utility, totally ignore these fundamental differences. Unlike the investor-owned utilities, there is virtually no public control over the District by any regulatory body.

SUMMARY OF ARGUMENT

Appellants erroneously contend that the Court of Appeals misapplied the principles established by this Court in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973). Quite to the contrary, the Court of Appeals carefully applied the requirements of *Salyer*, and found that the Salt River Project District was not the narrow, limited-purpose district whose land-based voting system could be measured according to a rational basis test as in *Salyer*.

In *Salyer*, the Tulare Lake Basin Water Storage District (Tulare District) was carrying on water storage and delivery operations for a 193,000 acre agricultural area in which only 77 people resided. No electric power was produced or sold by the district. All costs of the water delivery operations were charged against landowners in proportion to services received. Over three-fourths of the land was owned by four corporations. This Court concluded that because (1) no public services were provided and (2) the district's actions disproportionately affected landowners as a group, a rational basis test would be applied in determining whether the land-based voting system was constitutional.

In contrast with the district in *Salyer*, the Salt River Project District not only provides electric service, but it serves more than 300,000 customers. Additionally, it delivers about 60% of the water used for municipal purposes in the Phoenix metropolitan area and possesses important additional powers over water allocation and management within and outside of its geographic area. Such activities clearly constitute important public services. *Salyer*, 410 U.S. at 728-29; *see Cipriano v. City of Houma*, 395 U.S. 701 (1969).

Also unlike the water storage district in *Salyer*, 98% of the costs of operation of the Salt River Project District are borne by electric customers. And, since 1973, the District has financed its capital improvements entirely from revenue bonds which are secured by District electric revenues.

Only 12% of District long-term debt is secured by a lien on the lands; further, the long-term debt has always been retired by District electric revenues. This Court has unequivocally held that a lien on land from municipal indebtedness is not sufficient to restrict the franchise to landowners. *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970).

The holding of the Ninth Circuit Court of Appeals in this case was entirely consistent with *Salyer*. Unlike the limited activity in *Salyer* of storing water and delivering it for agricultural use, here the economy and lifestyle of central Arizona are heavily affected by the activities of the Salt River Project District. Thus, the Court of Appeals correctly held that "in view of the broad scope and impact of its activities, the Salt River District cannot be characterized as having a special limited purpose." 613 F.2d at 183-84.

Also unlike the Tulare District which assessed all costs against landowners, here virtually all costs are recovered from District electric customers. The Court of Appeals correctly recognized that essential distinction. *Id.* at 184. Other federal courts and state courts have viewed *Salyer* in precisely the same manner as did the Court of Appeals.[12]

Thus, because *Salyer* presents an entirely different situation from the case herein, the strict standard of review enunciated in such cases as *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969), and *Reynolds v. Sims*,

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[12] The most pertinent of these is *Choudhry v. Free*, 131 Cal. Rptr. 654, 552 P.2d 438 (1976), in which the California Supreme Court declared unconstitutional the acreage restrictions in the Imperial Irrigation District. The case is discussed in more detail at pages 24-26, *infra*. *See Baker v. Regional High School District No. 5*, 520 F.2d 799 (2d Cir. 1975) (*Salyer* would not apply to "general public services"); *Johnson v. Lewiston Orchards Irrigation District*, 99 Idaho 501, 584 P.2d 646 (1978) (district which received 66% of its revenue from domestic water sales substantially affected all residents); *Wright v. Town Board of Carlton*, 41 A.D.2d 290, 342 N.Y.S.2d 577 (1973) (district which supplied water for domestic use distinguished from *Salyer* because nonproperty owners were interested in availability of water supply).

377 U.S. 533 (1964), applies. Under this standard the inquiry is whether nonproperty owners are substantially affected by the District's activities. *City of Phoenix v. Kolodziejski, supra.* The essential electric and water operations of the District do have an important and substantial impact on all residents of the District. *Cipriano v. City of Houma, supra.*

Even if this Court was to apply the rational basis test, the acreage-voting system of the District is clearly irrational. The obligation to repay nearly all of the District's debt has nothing to do with land ownership; the debt is in the form of revenue bonds secured by a lien on electric power revenues for which the electric customers, not the landowners, are liable.

The acreage-voting procedure is purportedly designed to restrict participation in District affairs to those whose lands are encumbered by District debt and to those receiving water from the District, in proportion to the debt on their land and water delivered. J.A. 35; Exhibit Q. However, because only individually-owned lands may be voted, 40% of District land does not qualify for voting purposes in the elections. J.A. 31. Yet the lien on District lands also applies to the land which cannot be voted.

Further, voting is permitted regardless of whether the landowner does in fact use District water. If the claimed purpose of the one acre, one vote system is to connect voting strength to water use, the purpose is certainly not served when the voting system fails to take into account whether or not the voter actually uses District water.

The District claims that its voting system is an example of "creativity and experimentation in local government." A.B. 40. To the contrary, since the early 1900's, the land-based voting system has not been significantly modified by the Arizona Legislature to meet "changing urban conditions." *Sailors v. Board of Education,* 387 U.S. 105, 110-111 (1967). A "creative" response to what was a problem 70 years ago has become an unaccountable and inert political

structure exercising vast powers in the midst of a rapidly-changing urban community. Despite the expanded authority which the Legislature has given the District to meet the demands of new growth and the new power to issue revenue bonds, the Legislature has not conformed the District's voting system to reflect its new functions and powers. The "experiment" has lacked one essential ingredient—a system of governance which provides for public accountability.

The District has evolved from an organization established to satisfy the needs of an agricultural community into a substantial governmental unit providing essential electric and water services to a major metropolitan area. That transformation must finally be recognized in its electoral process. It is an anachronism to vest the control of such an important public institution to those representing solely agricultural interests. All segments of the community are vitally interested in the decisions and actions of the District; all must be allowed greater participation in the election process.[13]

[13] The Arizona Legislature would have the initial opportunity to devise a constitutionally-adequate voting system. Appellees do not believe that it is up to this Court, or the district court on remand, to fashion a constitutional voting scheme. All Appellees ask is a reasoned determination that the present system is unconstitutional. Upon such a determination, the State of Arizona may engage in meaningful "experimentation in local government" by devising a system which makes the District accountable to those it governs and serves.

ARGUMENT

I. THE DISTRICT'S ONE ACRE, ONE VOTE SYSTEM IS NOT WITHIN THE NARROW EXCEPTION TO TRADITIONAL CONSTITUTIONAL PRINCIPLES.

A. *This Court Has Looked with Disfavor upon Conditioning the Right to Vote on Property Ownership.*

It is elemental that the right to vote is considered one of the most sacred and important rights in our society. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). This Court has stated:

> [T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, [and] any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Reynolds v. Sims, 377 U.S. 533, 562 (1964). A careful examination of voting requirements, other than reasonable citizenship, age, and residency, becomes necessary because of the potential danger of denying some citizens an effective say in "governmental affairs which substantially affect their lives." *Kramer v. Union Free School District No. 15,* 395 U.S. 621, 627 (1969).

In a long series of decisions, this Court has firmly established that conditioning participation in the election process upon ownership of property is constitutionally impermissible. In *Kramer v. Union Free School District No. 15,* the Court invalidated the New York law which limited voting in school district elections to owners or lessees of taxable real property or parents of children enrolled in local public schools. The statute was challenged by a bachelor who neither owned nor leased taxable real property. The Court never reached the issue of whether the exclusions

were necessary to promote a compelling state interest because it found that the classification of "primarily interested" voters, even if permissible, was not drawn with sufficient precision to achieve the articulated state goal.

In *Cipriano v. City of Houma*, 395 U.S. 701 (1969), this Court invalidated a Louisiana law which gave only property taxpayers the right to vote in elections to approve the issuance of revenue bonds by a municipal utility. The Court found that the operation of the city's utility services affected virtually every resident. 395 U.S. at 705. The impact of the revenue bond issue was found to be unconnected to one's status as a property taxpayer because any "benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike." *Id.* Applying the "exacting standard of precision," enunciated in *Kramer*, the Court found that the challenged statute excluded "otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as those who are permitted to vote." 395 U.S. at 706.

In *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970), the Court struck down an Arizona constitutional provision which limited voting to real property taxpayers in elections authorizing the issuance of general obligation bonds. The City of Phoenix claimed that only property taxpayers could vote because under Arizona law property taxes were to be levied to service the bonds. The bonds were, in effect, a lien on the real property; if other revenue sources were insufficient to make debt service payments, property taxes would be used.

This Court carefully examined the interests of the nonproperty owners. First, they had a substantial interest in public facilities and services; second, revenues other than property taxes were used to satisfy more than half the debt service; and third, although the initial incidence of cost was on the landowning taxpayer, the ultimate burden was passed on to lessees of rental property in the form of higher rents. Property taxes paid by business were borne by all

residents alike in the form of higher products and service costs. The Court concluded that the "differences" between their interests were not "sufficiently substantial to justify excluding the latter [nonproperty owners] from the franchise." 399 U.S. at 209.

This Court has also held that voting could not be restricted to property owners in a special election in a road district to authorize the sale of bonds to build roads. *Police Jury of the Parish of Vermilion v. Hebert*, 404 U.S. 807 (1971), *rev'g mem.*, 258 La. 41, 245 So. 2d 349 (1971).

In *Hill v. Stone*, 421 U.S. 289 (1975), the Texas law limiting the right to vote in city bond elections to persons owning taxable property was declared unconstitutional. The Court summarized the relevant law as follows:

> The basic principle . . . is that as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or state can demonstrate that the classification serves a compelling state interest.

Id. at 297 (citations omitted). As in the *City of Phoenix* case, the Court concluded that although the initial cost burden of the bonds would fall entirely on property taxpayers, all members of the community, property owners and nonproperty owners alike, ultimately share in the costs.

B. *The District is not a Special-Purpose Unit of Government as Described in Salyer.*

1. The Tulare District and the Salt River Project District are Totally Dissimilar.

In *Salyer*, this Court was presented with the Tulare District whose sole function was to plan and execute projects for the acquisition, storage and distribution of water for agriculture. In contrast, the Salt River Project District has independent authority to provide electric utility service and water management and delivery responsibilities for a large urban area. Eighty-five percent of the land in the Tulare District was owned by four corporations. In contrast, there

are over 359,000 property owners in the Salt River Project District. J.A. 47. And of the only 77 people who resided in the Tulare District, 66 were employed by one farm; 11 lived in the remaining 165,000 acres. Transcript of oral argument in *Salyer* at 36. In contrast, the Salt River Project District includes the major portions of the Phoenix metropolitan area. J.A. 32.

Costs of the Tulare District's projects were assessed against land strictly in accordance with the benefits received by each parcel. In contrast, 98 percent of the Salt River Project District's revenues are derived from electric customers without regard to land ownership. J.A. 36. In the Tulare District, projects required the approval of a majority of the votes cast, and also a majority of the voters. *Salyer*, 410 U.S. at 723 n.3. In contrast, no such safeguard exists to protect all of the voters within the District. And "[u]nder Arizona Law, the District Board has exclusive authority to establish electric rates." Exhibit K at 30.

The Salt River Project District's powers are far more extensive than the Tulare District. The Arizona Constitution and statutes place the District on a par with municipalities:

> [A]gricultural improvement, . . districts, . . shall be political subdivisions of the State, and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subsidivisions under this Constitution or any law of the State or of the United States; . . .

ARIZ. CONST. art. 13, § 7.

> An agricultural improvement district . . . is a public, political, taxing subdivision of the state, and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally to municipal corporations by the constitution and statutes of the state, including immunity of its property and bonds from taxation.

ARIZ. REV. STAT. ANN. § 45-902 (1956). As incidents to its city-like status, the District may bring condemnation proceedings and exercise the right of eminent domain, ARIZ. REV. STAT. ANN. § 45-939 (1956), enter upon any land to carry out its purposes, ARIZ. REV. STAT. ANN. § 45-940 (1956), and raise revenue through the levy of taxes, ARIZ. REV. STAT. ANN. § 45-1011 *et seq.* (1956). Most important, the District Board of Directors, appellants herein, has plenary and exclusive power to direct District operations and affairs. ARIZ. REV. STAT. ANN. §§ 45-935-937 (1956) (Supp. 1980).

Unlike the Tulare District which had no other function than to store and distribute water for farming, the Salt River Project District has broad authority to engage in electric power operations totally independent of its water delivery activities. Under Arizona law, the District may, without regard to reclamation activities, "provide power . . . for the use of the owners or occupants of the lands." ARIZ. REV. STAT. ANN. § 45-903.6 (1956). The District's Board of Directors is further authorized to execute contracts "[f]or providing or furnishing power . . . for use of the owners or occupants of land within the district." ARIZ. REV. STAT. ANN. § 45-936. A. 3. (1956).[14]

The foregoing statutes dispel the District's argument that its vast electric operations are nothing more than a business venture of the landowners. Indeed, the Court of Appeals correctly dismissed that contention:

> [T]he scale of the District's operations simply does not permit the interpretation that the electric utility is a side venture that the District dabbles in to pick up a

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[14] Appellants dwell at length on the parties' stipulation that the creation of the District in 1937 was to carry out the original reclamation activities of its predecessor, the Water Users' Association. Of course, at that time, the power activities of the Association and the District were truly incidental to water delivery.

Even the District impliedly acknowledges its changed character and emphasis. It has stated that "[t]he *initial* reason for the existence of the Salt River Project was water supply." Exhibit K at 7 (emphasis added).

> little extra money in order to benefit the landowners. The operation of the utility has taken on independent significance. . . . [I]t would elevate form over substance to characterize the District as functioning solely for the benefit of landowners.[15]

613 F.2d at 184. Thus, the District's electric operations have an independent existence fully separate and distinct from its water activities.

Even the District's water functions are totally dissimilar to the narrow agricultural purpose of the district in *Salyer*. Although the District's functions were once limited to supplying water for farming, the mushrooming growth in the Phoenix area affected the use to which District water was put. When this action was filed, 40% of District water was used for urban purposes. J.A. 48. The Court of Appeals correctly observed that this water is "used and paid for in a manner unrelated to agriculture or land ownership." 613 F.2d at 184. The eight cities, which receive almost 60 percent of their municipal water from the District, J.A. 35, pay for the water from municipal water revenues. J.A. 50. Although the quantity of water delivered to the cities is based

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[15] The only power activities of the District which are incidental to its water functions are its hydro-electric generating facilities located at its dams. Exhibit K at 8.

Referring to the reclamation project, which exists separate and apart from the District, J.A. 20, the 1949 contract between the District and the Water Users' Association provides that "[i]t is recognized that the Salt River Project is primarily an irrigation project, and that *development and generation of hydro-electric power therein is secondary*," . . . Exhibit H at § VII (a) (emphasis added).

The reclamation statutes citied by Appellants contain no authority for the District to engage in the generation and sale of electricity wholly independent of reclamation activities. *See* 43 U.S.C. §§ 501, 522, 598. Furthermore, in an opinion to an Arizona legislator, the Office of the Solicitor, Department of the Interior, states that any "authority of the District to build and operate thermal electric generating plants derives from state law, not from Federal law." Attached as Appendix A to the Reply Brief filed in the Court of Appeals.

upon acreage,[16] the water is used in ways unrelated to land ownership.

Appellants argue that the "use to which this water is put once it is delivered to its owners is of no concern to the District. . . ." A.B. 14. Despite this cavalier attitude, the fact remains that the District controls the primary water supply system for almost one and one half million people. The use of District water for municipal purposes is markedly different from the agricultural use of water in *Salyer*.

The District's management of the 13,000 square mile watershed which ultimately serves the Phoenix area has taken on even greater significance in light of the recognized long-term water shortages which face our community. The Arizona Legislature recently enacted a comprehensive groundwater code, noting:

> The legislature finds that the people of Arizona are dependent in whole or in part upon groundwater basins for their water supply and that in many basins and sub-basins withdrawal of groundwater is greatly in excess of the safe annual yield and that this is threatening to destroy the economy of certain areas of this state and is threatening to do substantial injury to the general economy and welfare of this state and its citizens.

ARIZ. REV. STAT. ANN. § 45-401.A. (Supp. 1980). The Salt River Project District is located within an area designated as requiring the active management of groundwater. ARIZ. REV. STAT. ANN. § 45-411.A.2 (Supp. 1980). Preserving Arizona's diminishing reserves of groundwater transcends the interests of property owners alone.

In summary, the District's tandem electric and water activities are functionally different from the district in *Salyer*. The District is not serving the water needs of an agricultural area far removed from city life. To the con-

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[16] The cities accept delivery of water in amounts based upon land which they own and urban land no longer receiving irrigation from the District. J.A. 34.

trary, it is literally the "life support" system for the 13th largest city in the United States.

2. The District Provides General Public Services.

In finding that the water storage district in *Salyer* did not exercise what would be considered "normal governmental authority," this Court stated:

> It provides no other general public services such as schools, housing, transportation, *utilities*, roads, or anything else of the type ordinarily financed by a municipal body. App. 86. There are no towns, shops, hospitals or other facilities, designed to improve the quality of life within the district boundaries, and it does not have a fire department, police, buses or trains. Ibid.

410 U.S. at 728-29 (emphasis added). The District does provide utility service; towns, shops and hospitals are located within its boundaries.

Appellants argue that "[w]ater and electricity represent the kinds of service that can be performed, and frequently are, by private enterprise." A.B. 34. Yet the Court specifically mentioned utilities as an example of a general public service which would be outside the rule established in *Salyer*. The cases preceding *Salyer* establish that this Court is concerned with the manner in which government affects people's lives rather than the label attached to the activity. *Avery v. Midland County*, 390 U.S. 474, 484 (1968) ([T]he powers of the Commissioners Court include the authority to make a substantial number of decisions that affect all citizens, ..."); *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50, 54 (1970) ("[T]hese powers ... have sufficient impact throughout the district to justify the conclusion that the principle which we applied in Avery should also be applied here.").

The most compelling legal authority directly contrary to Appellants' position is this Court's decision in *Cipriano v. City of Houma, supra.* There the Court struck down property ownership restrictions in elections called to approve bond sales to finance extensions and improvements to the city's gas, water and electric system. Thus, it must be concluded that because the District provides vital public services it is outside of the narrow holding of *Salyer.*

3. The District's Activities do not Disproportionately Affect Landowners.

The Court in *Salyer* carefully explained that *all* costs of the Tulare District's activities were borne by landowners.

> All of the costs of district projects are assessed against land by assessors in proportion to the benefits received. Likewise, charges for services rendered are collectible from persons receiving their benefit in proportion to the services. . . . *In short, there is no way that the economic burdens of district operations can fall on residents qua residents,* and the operations of the districts primarily affect the land within their boundaries.

410 U.S. at 729 (emphasis added). Salt River Project District operations are easily contrasted with *Salyer.* Virtually all of the costs of the District's water and power operations, 98%, J.A. 36, are paid by electric customers, without regard to land ownership.

The District's water operations are only partially related to land ownership because 40% of District water is used for urban purposes. J.A. 48. It makes little practical difference that water is delivered first to municipalities which in turn distribute the water to consumers because "the charges set by the district obviously affect the rates set by the municipalities . . . ." *Choudhry v. Free,* 131 Cal. Rptr. 654, 552 P.2d 438, 441 n.6 (1976).

This Court has already acknowledged that the operation of water and electrical systems serving an urban community affect more than just property owners.

> Of course, the operation of the utility systems—gas, water, and electric—affects virtually every resident of the city, nonproperty owners as well as property owners. All users pay utility bills, and the rates may be affected substantially by the amount of revenue bonds outstanding. Certainly property owners are not alone in feeling the impact of bad utility service or high rates, or in reaping the benefits of good service and low rates.

Cipriano v. City of Houma, 395 U.S. at 705.

Throughout their brief, Appellants argue that the one acre, one vote system was designed to shield their "entrepreneurial risk" and their "investment." A.B. 20-28. But the District's balance sheet is devoid of any "equity." Exhibit L at 15. The landowners have invested none of their own money in District operations. Their "risk" is limited to the lien on District lands arising from the general obligation bonds and loans owed to the United States Government.

As of January 2, 1976, the District's total outstanding long-term debt was $796 million. Exhibit K at 36. Of that amount, only 36% of the long-term debt was made up of general obligation bonds which are considered a lien upon property in the District. ARIZ. REV. STAT. ANN. § 45-1047 (1956). By July 31, 1980, out of $2 billion in long-term debt, general obligation bonds (and United States Government obligations) were only $240 million or 12% of total indebtedness. OFFICIAL STATEMENT 25. All general obligation bonds will be fully paid off in 26 years. *Id.* at 26.

There is very little risk that the District would ever have to levy against these lands to pay off its general obligation bond debt. "In all years to date net electric revenues have

been more than sufficient to meet all debt service requirements." Exhibit L at 18.[17]

Thus, the claimed "entrepreneurial risk" is illusory. Despite the repeated rhetoric attributing to landowners a significant financial stake in District activities, it can easily be seen that such is certainly not the case. The active financing of long term debt through the sale of revenue bonds has made the landowners' risk virtually nonexistent.

C. *The California Supreme Court, Considering Facts very Similar to Those Present Here, Rejected Property-Ownership Restrictions.*

The singular agricultural purpose of the Tulare District, its remote location away from urban areas, and its sole impact on landowners, was recently analyzed by the California Supreme Court, under both state and federal law,

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[17] Appellants express the fear that a new board of directors more representative of the public at large "could lower electric rates to a point that an acreage assessment . . . or an acreage tax . . . would have to be imposed." A.B. 35. They complain that the owner of a 50 acre farm would pay much more than a homeowner. This speculation is unfounded for a number of reasons.

First, the general obligation bonds all contain covenants binding the District to collect electric rates "sufficient at all times to pay all necessary costs of the operation and maintenance of said electric system" and "to pay the principal of and interest on all bonds of said District. . . ." Resolution authorizing sale of $180,000,000 of General Obligation Bonds at 27 (Feb. 10, 1970), attached as an Exhibit to Appellees' Response to Petition for Rehearing before the Court of Appeals. These covenants are, of course, binding on any future Board of Directors. *See City of Cleveland v. Cleveland City Ry. Co.*, 194 U.S. 517 (1904).

Second, there are obviously hundreds of thousands of homeowners who would presumably make up any new voting constituency; what possible interest would they have in encouraging any new Board to set rates so low as to jeopardize their land? The spectre of an acreage assessment could be more ominous to a homeowner than to the farmer. *See Stewart v. Parish School Board of the Parish of St. Charles*, 310 F. Supp. 1172, 1179 (E. D. La. 1970), *aff'd mem.*, 400 U.S. 884 (1970).

Finally, even if there were any merit to Appellants' concern, this Court has always held that it is impermissible to exclude voters from the franchise because of the way they may vote. *Evans v. Cornman*, 398 U.S. 419, 423 (1970); *Carrington v. Rash*, 380 U.S. 89, 94 (1965).

when it declared unconstitutional the acreage restrictions for serving on the board of the Imperial Irrigation District, in a case remarkably similar to this.[18] *Choudhry v. Free, supra.* Although there was no freeholder requirement for voting, members of the board of directors were required to own property.

The court distinguished the Imperial Irrigation District from the Tulare District in precisely the same manner that the Ninth Circuit Court of Appeals concluded that Salt River Project District is different:

1. The district "may produce or purchase electric power . . . without regard to whether such functions are ancillary to irrigation . . . ."

552 P.2d at 443;

2. "[A]ssessments against land are not the sole means by which the district's expenses are paid. The district may collect charges for the sale of domestic water, electric power, . . and such charges are paid by both landowners and those who do not own land. And it is authorized to pay its bonds from revenues other than assessments."

Id.;

3. "[T]here is a very great difference between the actual functions and effects of the water storage district involved in *Salyer* and the district in the present case."

Id.

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[18] The California Supreme Court held the acreage restrictions unconstitutional even though the original legislative purpose of such districts was water delivery. Cal. Water Code § 20500 *et seq.* (1956). In fact, under California law "an irrigation district's main purpose is to develop, preserve and conserve water. . . ." *City of Modesto v. Modesto Irrigation District*, 34 Cal. App. 3d 504, 110 Cal. Rptr. 111, 113 (1973). Furthermore, just like the Arizona cases ascribing business-like characteristics to the Salt River Project District, the electric operations of California irrigation districts have been described as proprietary functions. *Yolo v. Modesto Irrigation District*, 216 Cal. 274, 13 P.2d 908, 910 (1932).

Upon finding these distinctions between the Imperial District and the district in *Salyer* and upon considering the impact of Imperial's activities on the lives of local residents, the court held the freeholder requirement unconstitutional.[19]

> *Since the directors of the district decide such issues as rate increases for water and power,* the distribution of water between agricultural and nonagricultural uses, *and other matters which could vitally affect the economic welfare of the residents as well as the environment in which they live, the bar of section 21100 imposes a substantial burden upon the right of franchise.*

Id. at 441 (emphasis added). The California Supreme Court opinion is a well-reasoned and careful application of this Court's holding in *Salyer.* It offers important guidance for this case because the facts forming the basis of the *Choudhry* opinion are quite similar to the facts here.

D. *The One Acre, One Vote System Fails to Meet the Strict Standard of Review.*

Because the Salt River Project District is not within the narrow exception to traditional voting analysis set forth in *Salyer,* its one acre, one vote system must be tested against the strict standard of review called for in *City of Phoenix v. Kolodziejski, supra.* Under this standard, the Court should consider whether nonproperty owners are substantially affected by the District's activities. *Kramer v. Union Free*

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[19] If a voter who does not own property cannot constitutionally be excluded from voting on a bond issue for the construction of a library (*Hill*) or bonds to be used by a municipal utility district (*Cipriano*) a fortiori, he may not be deprived of the right to vote in an election for director of an irrigation district, which exercises the broad powers and provides the essential services rendered by Imperial.
552 P.2d at 443.

School District No. 15, supra. It is clear that the interests of nonproperty owners and the interests of property owners are not sufficiently substantial to justify excluding the former from the franchise.

The lien on District lands is similar to the financial interest of property taxpayers asserted in *City of Phoenix.* City of Phoenix general obligation bonds are secured by the general taxing power of the City. 399 U.S. at 208. And property tax payments are relied upon to make debt service payments if other revenue sources are insufficient. *Id.*

The Court concluded, however, that the interests of nonproperty owners in the bond elections were not substantially different from the interests of property owners. Justice White, writing for the majority, stated:

> [I]t is unquestioned that all residents of Phoenix, property owners and nonproperty owners alike, have a substantial interest in the public facilities and the services available in the city and will be substantially affected by the ultimate outcome of the bond election at issue in this case.

Id. at 209. Likewise, all citizens are vitally interested in the District elections because Appellants have exclusive authority to make decisions regarding the District's essential water and power functions.

In *City of Phoenix,* half of the debt service was to be satisfied from revenues other than property taxes. *Id.* at 209-210. The interest of landowners here is even more remote because District debt service is financed solely through electric rates. Exhibit L at 18.

The obvious interest which all citizens have in a reliable supply of electricity and water has been expressly recognized by this Court. *Cipriano v. City of Houma, supra.* All citizens, whether they purchase electric service from the District or not, are affected by its electrical operations be-

cause they undoubtedly purchase services and products from others who do buy power from the District. Even in those District areas served by Arizona Public Service Co., the District sells A.P.S. its power requirements. J.A. 37.

The claimed financial interest of District landowners was conclusively rejected by the Court in *Hill v. Stone, supra.* Justice Marshall wrote: "Even under a system in which the responsibility of retiring the bonded indebtedness falls directly on property taxpayers, all members of the community share the cost in various ways." 421 U.S. at 299. It is not enough for the District to show that property owners are affected by its actions; it must also be shown that nonproperty owners are substantially less interested in District elections. The District is simply unable to establish this lesser interest.

II. THE ONE ACRE, ONE VOTE SYSTEM DOES NOT EVEN MEET THE TEST OF REASONABLENESS.

The purported purpose of the acreage-voting system is to (1) permit voting on a "debt-proportionate" basis and (2) to connect voting strength to water use. J.A. 35. Even under the more lenient rational basis test, the one acre, one vote system is unconstitutional. As the Court held recently, even in special-district elections, the "classification of voters into 'interested' and 'non-interested' groups must still be reasonably precise, . . ." *Lockport v. Citizens for Community Action,* 430 U.S. 259, 266 (1977).

The District's voting system is predicated upon the so-called "debt-proportionate" system. Debt-proportionate voting was explained by the District in a March 18, 1969, Resolution. "[T]he privilege of voting is commensurate with the burden of debt; that is, the more land a person owns and puts forth as collateral, the more he has at stake, and the greater influence he has in Project affairs." Exhibit Q at 3.

The dramatic reduction in recent years in the amount of District debt secured by a pledge of lands within the District has completely destroyed the rationality of limiting the franchise on the basis of acreage owned. District landowners now run a technical risk of being forced to repay only about 12% of the District's total indebtedness;[20] District electric customers are totally responsible for about 90% of the District's debt, to be paid through power revenues. Yet the District still clings to debt-proportionate voting.

The privilege of voting to elect the governing officers of this District is no longer commensurate with the burden of debt. More than anything else, this fundamental shift in the way the District is financing its activities totally undercuts the rationale for limiting the franchise to landowners on the basis of acreage owned. Large landowners can, without any regulatory or governmental scrutiny whatsoever, saddle current and future customers with total responsibility to repay debts incurred to finance District operations. These customers have absolutely no voice in the decision to undertake this debt, except to the extent they own large amounts of acreage in the District.

The voting system does not even achieve the purported goal of authorizing voting commensurate with debt because all landowners cannot participate in District elections in proportion to land owned. Only about 141,000 acres or 60% of District lands are owned by persons otherwise qualified to vote and are thus eligible to be voted in the elections. ARIZ. REV. STAT. ANN. § 45-909 (Supp. 1980); J.A. 31. Because the lien on District lands burdens corporate landowners and not simply individual landowners, the goal

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[20] General obligations bonds contain covenants providing that electric rates must be set at levels sufficient to pay *all* debt service. See footnote 17, *supra*.

of allowing those to vote in proportion to the debt on their land is clearly frustrated by restricting voting to only landowners who are also qualified electors.

In *Salyer, all* landowners, both corporate and individual, were extended the franchise in elections for the water storage district: *"The franchise is extended to landowners* whether they reside in the district or out of it, and indeed *whether or not they are natural persons who would be entitled to vote in a more traditional political election."* 410 U.S. at 730 (emphasis added). This point was also considered by the court in *Stewart v. Parish School Board of the Parish of St. Charles, supra.* This was an action to invalidate a school bond election on the grounds that a Louisiana statute unconstitutionally limited voting in the election to qualified electors who were also property owners. The district court succinctly stated the inconsistency in the argument that restricting voting to *qualified electors* who owned property was designed to protect the interests of property taxpayers:

> But if protection of the property taxpayer had been the legislature's chief interest, the law would not have excluded business entities. These are the taxpayers who pay the largest share of taxes in most voting districts.

310 F. Supp. at 1178. Thus, the exclusion of business entities from the District's voting scheme demonstrates conclusively that the debt-proportionate voting system does not achieve its purpose of allowing voting commensurate with land ownership.

The acreage-voting system also bears little relation to the water delivery functions of the District because Appellants permit voting regardless of whether the voter actually uses District water. In other words, the owner of a commercial acre of land has the same vote as the owner of an agricul-

tural acre. If a purported basis of the voting system is to connect voting to water use, it is irrational to permit voting without any inquiry whatsoever into whether or not the voter does in fact use District water.

III. THE ASSERTED BUSINESS CHARACTERISTICS OF THE DISTRICT ARE NOT CONSTITUTIONALLY RELEVANT. THE VOTING SYSTEM MUST BE CONSIDERED IN LIGHT OF ITS IMPACT ON PEOPLE'S LIVES TODAY, NOT ITS HISTORIC PURPOSES.

A. *Regardless of its Asserted Business Character, the District's Voting System is not Immune from Constitutional Scrutiny.*

Implicit in Appellants' brief is the suggestion that the District is so like a business that even the reasonableness standard used in *Salyer* has no applicability to it. But even in *Salyer*, where the business attributes of the Tulare District were so apparent, the Court did not throw the Constitution out the window.

The Court of Appeals summed up this important point this way:

> *Salyer* did not hold that the fourteenth amendment did not apply to the water district. The Court assumed there was state action and dealt with the question of the requirements of the fourteenth amendment in that situation. The issue is not whether the Salt River District is a state entity, but whether, having made the decision to create the entity and provide for the election of its directors, the state can deny the electoral franchise to citizens whose economic interest and natural environment are vitally affected by the entity's operations.

613 F.2d at 184-85. Appellants do not even purport to defend the "reasonableness" of the acreage-voting scheme.

The historic purpose and categorization of the District by Arizona Courts are not and cannot be disputed. But what Appellants overlook is that the "Constitution is concerned with the practical consequences, not the formal categorizations, of state law." *North Carolina v. Alford,* 400 U.S. 25, 37 (1970).

The fallacy of Appellants' position is that constitutional guarantees may not be abridged merely because a "business" label is attached to governmental action; instead, the Court examines the manner in which government affects people's lives:

> [T]he Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.

Gomillion v. Lightfoot, 364 U.S. 339, 344-45 (1960). The prerogative of the federal courts to review the constitutionality of voting schemes purporting to protect the interest of special segments of society is implicit in *Salyer.*[21]

Appellants' argument that the economic subsidy to landowners resulting from the acreage-voting system is within the realm of legislative discretion, totally misses the mark. Of course, *popularly elected* governmental bodies should be free to make economic and social policy (within constitutional bounds). Where political units are directly accountable to those affected by their activities broad leeway should be given to them.

But where government lacks that accountability it may act in contravention of the interests and will of the people which it serves. Economic, social and environmental decisions affecting the entire population of central Arizona

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[21] At oral argument, counsel for the Tulare District dwelled at length on its business purpose. Transcript of oral argument 34, 40-41, 43. Even so, appellants in *Salyer* were, "of course, entitled to have their equal protection claim assessed . . . ." *Salyer* 410 U.S. at 730.

cannot be constitutionaly restricted to a small clique representing one narrow segment of our community—large landowners. The unrestrained and omnipresent power of the District is not "within the scope of relevant limitations imposed by the United States Constitution" when it is coupled with virtual total unaccountability to the public at large.

The Court of Appeals correctly noted that the acreage-based voting system was not the constitutionally correct way to insure that the District followed its purported purposes:

> In this Court the District makes repeated reference to statutory and decisional authority indicating that the District's principal purpose and obligation is to provide water to the lands within it. If this legal proposition is correct, then the district will no doubt comply with it or be subject to corrective action by the courts or the Arizona legislature. It is not, however, an argument that justifies trying to skew the electoral system as an indirect way to produce that result.

613 F.2d at 185.

B. *The District's Heavy Reliance on Historic Purpose is Misplaced.*

The District would have the Court examine the constitutionality of its acreage-voting scheme in light of circumstances long since past. Although the purpose for which the District was organized three quarters of a century ago may explain why the land-based voting system still exists, this Court uniformly evaluates an equal protection challenge to legislation in light of present-day conditions.

This rule was applied most forcefully by this Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), in determining whether separate but equal educational facilities were constitutional. The Court refused to examine public education under conditions of prior years:

> In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted,

> or even to 1896 when Plessy v. Ferguson was written. We must consider public education in light of its full development and its present place in American life throughout the Nation. . . .

347 U.S. at 492-93. Time after time, this Court has stressed the relevancy of present facts over the past.

In *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924), an action was brought to enjoin an order of the Rent Commission of the District of Columbia reducing rent for an apartment building. The landlord complained that the "emergency which existed in 1919" had "come to an end" by 1922. The Court reversed the dismissal of the complaint, stating the rule of law as follows: "A law depending upon the existence of . . . [a] certain state of facts to uphold it may cease to operate if the . . . facts change, even though valid when passed." 264 U.S. at 547-48. *See, e.g., City of Rome v. United States*, 48 U.S. L.W. 4463, 4470 (April 22, 1980); *Leary v. United States*, 395 U.S. 6, 38 (1969); *Burrey v. Embarcadero Improvement District*, 97 Cal. Rptr. 203, 488 P.2d 395, 404 (1971).

Thus, the District's lengthy historic survey does not undercut in any way the contentions of the disenfranchised residents that its voting system is unconstitutional. The acreage-voting scheme must be measured against today's circumstances and the pervasive impact which the District has on its residents in 1980. Because the focus of this Court's inquiry must be in the here and now, the conclusion that the District's voting system is unconstitutional is unescapable.

CONCLUSION

Appellants mistakenly characterize the inevitable result of upholding the Court of Appeals' decision as vesting control of the District in its electric customers. But the question of remedy is a separate one from the question of

whether the current structure violates the Constitution. Formulating an appropriate remedy to redress the constitutional violation should initially be within the province of the Arizona Legislature.

The evolution of the District has been reflected by many legislative changes except one—its voting system. Because the one acre, one vote scheme is predicated upon facts and circumstances, which are now only of historic interest, it has become constitutionally infirm. The District's pivotal electric and water functions substantially affect the lives of all of its residents; it may not continue to carry out these essential activites under the control of large landowners alone.

Respectfully submitted,

BRUCE MEYERSON
AMY J. GITTLER
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
112 North Fifth Avenue
Phoenix, Arizona 85003
Tel. (602) 252-4904

Counsel for Appellees

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APPENDIX A

OFFICIAL STATEMENT
SALT RIVER PROJECT ELECTRIC SYSTEM
REVENUE BONDS, 1980 SERIES B AT 25

Outstanding Long-Term Indebtedness

Outstanding long-term indebtedness at July 31, 1980 consisted of Prior Lien Bonds (including loans from the United States of America), equipment contracts and Revenue Bonds, as shown below. In all years to date, Revenues Available for Debt Service have been more than sufficient to meet all debt service requirements and the District has never used its taxing power for the Prior Lien Bonds.

	Coupon %	Amount (as of July 31, 1980)	Future Maturities
General Obligation Bonds			
Issues No. 6 through 14	1 to 6	$ 229,600,000	1981-2003
Unamortized Bond Discount		(2,280,334)	
Total Net General Obligation Bonds Outstanding		$ 227,319,666	
U.S. Government Obligations		$ 13,029,137	1980-2004
Total Net Prior Lien Debt Outstanding		$ 240,348,803	
Electric System Revenue Bonds			
1973 Series A and B	5 to 6½	$ 142,205,000	1981-2011
1974 Series A and B	5.7 to 7.6	140,000,000	1983-2012
1976 Series A, B, C and D	4¼ to 7.2	404,150,000	1981-2016
1977 Series A, B Refunding and C	4 to 6⅛	394,215,000	1981-2017
1978 Series A, B and C	4.4 to 7	317,900,000	1981-2018
1979 Series A, B and C	4¾ to 7¼	281,045,000	1983-2019
1980 Series A	7.4 to 9¼	125,000,000	1985-2020
Total Electric System Revenue Bonds Outstanding		$1,804,515,000	
Unamortized Bond Discount		(27,061,667)	
Total Net Electric System Revenue Bonds Outstanding		$1,777,453,333	
Equipment Contracts		$ 1,290,439	1980-1983
Total Net Long-term Indebtedness		$2,019,092,575	